

Pharma & Life Sciences

# DeChambeau's Big Miss at Masters Is Lesson in Successful Failure

By Roy Strom

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*Welcome back to the Big Law Business column on the changing legal marketplace written by me, Roy Strom. This week, we look at how law firms can boost realization rates by adopting a "swing big" strategy. Sign up to receive this column in your inbox on Thursday mornings. Programming Note: Big Law Business will be off next week for Thanksgiving.*

Dustin Johnson won the Masters last week in convincing fashion, becoming the first World No. 1 ranked golfer to win the tournament since Tiger Woods in 2002.

If Big Law partners were trying to discern a message to take from the tournament, they may have viewed "DJ's" big win as a metaphor for cementing the importance of top talent. The best outperforming the rest. It's a theme at the very top of the legal industry we've been talking about for a while!

I realize I was probably the only person watching the Masters looking for Big Law parallels—well, maybe me and Augusta National chair and Foley & Lardner partner Fred Ridley.

Anybody who loves golf knows the game means a lot more than chasing a ball around a field. So, why can't it have lessons for partners at the world's largest law firms?

I won't argue with Big Law readers and golf fans for seeing Johnson's win as the most important narrative to emerge from the tournament. But there was another lesson on display during this unconventional Masters in November: If you want to change the status quo, you have to accept failure as part of the process.

Bryson DeChambeau was the talk of the tournament heading into the week. Coming off a six-stroke U.S. Open victory in September, DeChambeau stormed into Augusta National with expectations not seen since Woods' first Masters as a professional in 1997. Tiger won that tournament by 12 strokes. DeChambeau failed to match that performance.

He was in focus for the commitment he's made to hitting the ball as far as he possibly can. The game's data revolution has shown distance is one of the most reliable ways to gain strokes on your competition.

Nobody is as maniacally focused on hitting it far as DeChambeau. He's gained 40 pounds. He's testing an extra-long driver. Before the Masters, he said he viewed his personal "par," the baseline for scoring, as five shots lower than what the par-72 scorecard showed. Even his competitors thought the tournament was his to lose, musing the golf course may need to be redesigned to defend against his strategy.

At Augusta National last week, DeChambeau's average drive was nearly 10 yards longer than anybody else's. Still, he finished middle-of-the-pack, in part because his swing-big strategy created possibilities for bigger misses. Prior to the tournament, he acknowledged accepting failure was part of his process.

"No matter what I do there are going to be times of failure and success. But I'm going to fail a lot more than I succeed," DeChambeau said. "It's about the process of trying to be better each and every day."

Golf forces even the best players to submit to failure. Law firm leaders could take that lesson beyond the 18th green

Lawyers have rules against "failing" their clients. As businesses, the billable hour model nearly inoculates firms from risk, which is a low-stress way to make money.

Still, clients are desperate for efficiency, and the prevailing law firm model is not providing it.

Consider an Altman Weil survey released this week in which clients ranked "offering new efficiencies to reduce costs" as the second-most valuable offering law firms could have provided during the Covid crisis.

How did law firms respond? During the most stressful environment their clients have faced in over a decade, a whopping 6.5% of legal departments said their outside lawyers offered anything in the way of new, efficient services.

"There were opportunities available to build loyalty and cement client relationships that were left on the table in 2020," the Altman Weil report said.

Most golfers are content with tap-in par putts, just like most firms are happy to collect 85 cents on the dollar. But, like Bryson's pursuit of maximizing his attempted eagle putts, Big Law could pursue a strategy not limited by the number of hours its lawyers work.

One way to meet client demands for efficiency is to invest lawyers' time in building products that can be sold on a basis other than the billable hour. It's the Big Law equivalent of a 400-yard drive. It introduces risk, but it also means lawyers could blow past the industry's self-imposed "speed limit:" realization rates.

Billing by the hour inherently limits revenue to the amount of time a firm's lawyers can work. Warren Buffett famously noted the importance of making money while you sleep. These days, clients only pay about 85% of the bills big firms send out as the industry's "realization rate" continues to dwindle.

Today's law firm model has plenty of roadblocks in the way of developing legal products that can be sold to multiple clients, including a compensation system that prioritizes making money today over investing for the future.

Jeffrey Sharer, chief innovation counsel at Actuate Law in Chicago, understands better than most how difficult it can be to break Big Law's allegiance to realization rates.

Before joining Actuate in 2018, he was the driving force building Akerman's Data Law Center, which won industry awards for automating data breach reporting laws for 50 states. Akerman no longer markets the product and Sharer has since rebuilt something like it at Actuate, which bills itself as a tech-forward law firm.

Through the lens of realization rates, law firms can view the time lawyers spend building products (and not billing clients) as a massive waste. But Sharer said that failing on a few products actually makes financial sense, given the potential of a winning product to blow past billable hour level returns.

"Innovation is not easy, but if you do it well you don't even have to succeed every time in order to more than recoup the investment of time that goes in upfront," he said. "The realization rate on the lawyer time that goes into a product that is sold to 100 clients can go through the roof. You can get into the thousands of percent."

Kimball Parker has built automated legal products that have already led to millions in sales as CEO of Wilson Sonsini's tech subsidiary SixFifty. In an interview, he said he didn't know what the term "realization rate" even meant—a good sign from an innovator's standpoint. But he acknowledged some law firm partners can struggle to see the long-term value in building automated legal products.

This is despite the fact that software-as-a-service start-ups can earn valuations of up to 10 times their recurring revenue.

"It is a completely different financial model than the law firms that do their work today, bill it tomorrow, and get 83% of that a few months later," he said. "This is more like: I'm going to lose some money today but I'm going to get millions back sometime in the future."

Matching up what clients want with what law firms provide—or how they provide it—is one of the key objectives for law firm innovation efforts, according to research by Michele DeStefano, a University of Miami School of Law professor. Accepting the risk involved with pursuing that could pay off with more lucrative relationships, she said.

"It leads to more business, more entrenched business, and more successive business," DeStefano said. "And that's a law firm's dream."

When DeChambeau returns to the Masters in April, you can bet he won't have abandoned his swing-big strategy. Despite his disappointing finish last week, he's still one of the favorites to win.

### **Worth Your Time**

**On Washington Work:** A slew of lawyers are getting new jobs as President-elect Joe Biden prepares his administration. Former Cravath, Swaine & Moore associate Dana Remus was picked as soon-to-be White House counsel. Former O'Melveny & Myers partner Ronald Klain will be Biden's chief of staff. Jill Biden tapped Winston & Strawn partner Julissa Reynoso Pantaleon as her chief of staff. Over at the Supreme Court, Amy Coney Barrett's husband, Jesse Barrett, will remain at his Indiana-based law firm while his wife serves as the newest justice.

**On Big Law's Emotional Toll:** Christie Tate, a former Skadden associate, wrote a bestselling book on how group therapy helped her overcome struggles she says were exacerbated by Big Law. As she told Elizabeth Olson: "The traits of addicts have a lot of overlap with those who choose Big Law: perfectionistic, driven, intense. Addictive qualities are exacerbated by the pressure and loneliness of Big Law."

**On Law Firms in Trouble:** Sanford Heisler Sharp is facing allegations of bias and discrimination from its own employees—not unlike some of the claims the firm has become well known for bringing against Big Law. Lawyers from Littler Mendelson have been accused by The Center for Workplace Compliance of unlawfully using its copyrighted materials for the firm's own work product.

*That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.*

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